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II. Executive summary

Madagascar

1. Introduction: Overview of the legal and institutional framework of Madagascar in the context of implementation of the United Nations Convention against Corruption

The Republic of Madagascar signed the Convention on 10 December 2003 and ratified it on 22 September 2004.

Madagascar rejoined the African Union in 2014, after a suspension of five years because of political and institutional instability. Madagascar has a semi-presidential regime, with the President of the Republic as Head of State, and a Prime Minister as the head of the executive. The legislative power is composed of the National Assembly and the Senate.

Madagascar has a civil law system with the Constitution as the supreme law. Conventions, once ratified, form part of the legal system, and rank under the Constitution but above legislation. The judiciary has, below the Constitutional Court at the top, three branches (ordinary, administrative and financial) headed by the Court of Cassation, the Council of State and the Court of Auditors respectively.

With regard to the criminal process, investigations are led by the Prosecutor's Office, which also brings accusations in court and has to maintain an objective role during trial before the courts and tribunals. The preliminary criminal investigation in corruption matters is under the main responsibility of the Bureau indépendant anti-corruption (BIANCO) and the criminal police.

The main anti-corruption institutions are the BIANCO and the Comité de Sauvegarde de l'Intégrité (CSI). The main anti-corruption legislation is contained in the anti-corruption Law No. 2004-030 and the anti-money-laundering Law No. 2004-020. A circular of the Ministry of Justice regulates criminal policy in anti-corruption matters.

At the time of the country visit, Madagascar was establishing a crime statistics system and was in consultations on the adoption of a National Anti-Corruption Strategy.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery is regulated in article 177.1 of the Penal Code (Code Pénal, (CP)), and a provision on gifts in article 183 CP. Passive bribery is regulated in article 177 CP. The active bribery of foreign officials and officials of international organizations is criminalized in article 177.2 CP, but there is no provision for passive bribery of these officials.

Madagascar does not have a single definition of public officials. The bribery provisions include a broad definition that covers members of Parliament as well as

judges or CEOs of public enterprises. However, other offences use different wording.

The "giving" of an advantage and third-party beneficiaries are not explicitly mentioned in the law.

Active and passive trading in influence are criminalized in 179 CP, which does not envisage third-party beneficiaries. Article 177.1, No. 3 (active bribery), also covers active trading in influence when the person abusing his/her influence (the intermediary) is a public official. The range of punishment in article 177.1, No. 3, and 179 CP is different.

Article 21 is implemented only in its passive form through article 178 CP. It covers managers, shareholders and employees as well as members of liberal professions and does not cover third-party beneficiaries.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in articles 1, 2, 3, and 30 to 35 of Law No. 2004-020 and is an autonomous offence.

Madagascar applies an "all crimes approach", including as predicate offences all offences, including those committed abroad. Those committed abroad must constitute a criminal offence in both countries, "unless it has been agreed to otherwise". Such an exception could be created by treaty, although no such agreement exists yet. The offender himself may also be the perpetrator of the predicate crime.

Concealment is criminalized in articles 460 and 401 CP.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is regulated in article 169 CP. The offence is already committed with the act of diversion, so it is irrelevant who the beneficiary of this offence is.

Article 19 is implemented through article 179.1 CP.

Madagascar has criminalized illicit enrichment in article 183.1 CP with regard to all public officials. Certain officials have the obligation to declare assets annually (art. 1 and 2 of Law No. 2004-030, Decree No. 2004-983).

Embezzlement in the private sector is criminalized by articles 379, 401, 406, 408 CP and article 931 of the Commercial Companies Code.

Obstruction of justice (art. 25)

Article 25 (a) is implemented through article 365 CP. It covers all means of obstruction of justice described, but only to induce false testimony, not to interfere in the giving of testimony or the production of evidence.

Article 25 (b) is implemented though article 27 of Law No. 2004-030, on obstructing the investigative efforts of the Director General of BIANCO, which is interpreted as referring to the entire institution. This provision does not include interference with the exercise of duties of other judicial or law enforcement officials.

Liability of legal persons (art. 26)

Madagascar regulates criminal liability of legal persons in article 32 of Law No. 2004-020, which allows the imposition of a fine five times as high as the one for natural persons. There is no general regime for the criminal liability of legal persons, but confiscation as an accessory criminal sanction is also applied with respect to property owned by legal persons (art. 16 of Law No. 2004-030).

Administrative liability is foreseen in article 17(2) of Law No. 2004-030 and articles 9 and 54 of the Public Procurement Code, which provide for mandatory debarment of companies from public procurement.

With regard to civil liability, Madagascar considers as a general principle of law that a legal person is liable for the conduct of its representatives.

Participation and attempt (art. 27)

Article 27 (1) is implemented through articles 59 and 60 CP. Accomplices are generally punished like the authors of the crime. The general rule about attempt is regulated in articles 2 and 3 CP. Attempt to commit a "*délit*" (misdemeanour) is only criminalized where provided for in law. Convention offences are *délits*, except for money-laundering and embezzlement, and do not provide for the criminalization of attempt. The preparation for a corruption offence is not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Sanctions for corruption offences in Madagascar range from fines to long imprisonment. Some sanctions in the law are not applied any more, for example, forced labour is transformed into imprisonment.

The immunities of the members of Parliament, as well as the procedures to lift them, are regulated in article 73 of the Constitution. Investigative steps can be taken during the procedure for lifting immunities. The President also enjoys immunity (art. 131 of the Constitution). Magistrates benefit from procedural privileges pursuant to articles 512 and 513 of the Criminal Procedure Code (CPC).

Prosecution is not mandatory; however, a circular of the Ministry of Justice on money-laundering requests prosecutors to exercise the opportunity principle with a view to enhancing the effectiveness of law enforcement. The decision of the prosecutor to prosecute or not can be judicially reviewed.

Madagascar's CPC contains regulations on alternatives to provisional detention (arts. 342-350) and on early release or parole (arts. 574- 578).

Public officials accused of corruption can be suspended and reassigned as a matter of practice by a discretionary administrative decision. The removal of an official accused but not convicted of a corruption offence is considered unconstitutional.

As an accessory sanction, offenders can be declared ineligible to exercise public functions for a period of at least two years (arts. 180, 180.1 and 172 CP). This includes holding office in an enterprise owned in whole or in part by the State.

Madagascar has a disciplinary system regulated by its Civil Service Statute; article 43(3) clarifies that disciplinary and criminal proceedings are independent.

The Decree on the Administration of the Penitentiary System (2005) contains provisions on the reintegration into society of convicted offenders.

Madagascar has implemented article 37 of the Convention through article 180.2 CP and article 161 CPC, which provide for the mitigation of or exemption from punishment for cooperating offenders.

Protection of witnesses and reporting persons (arts. 32 and 33)

The protection of witnesses and whistle-blowers is provided for in articles 32 to 35 of Law No. 2004-030, which establish some of the relevant measures, for example, the protection of identity. Law enforcement agencies can provide physical protection but they lack sufficient financial resources to carry out this function at the expense of the State. Evidentiary rules for witness protection are applied as a matter of practice. The legislation does not apply to experts. A witness protection programme has not yet been established. Victims have standing in the criminal process when they ask for reparation, but not generally to express their concerns.

Reprisals against whistle-blowers or witnesses are forbidden. BIANCO is responsible for protecting their identity. Whistle-blowers may file written complaints with BIANCO, and BIANCO can thereupon approach the competent authority, which may take measures such as reinstating or reimbursement (arts. 32-35, Law No. 2004-30).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Madagascar has regulated conviction-based confiscation as an accessory sanction for specific offences in the Penal Code (for example in art. 183.2 CP). In article 16 of Law No. 2004-30, there is a general authorization for, inter alia, confiscation in all corruption cases, without further detail.

Articles 36 and 37 of Law No. 2004-20 establish conviction- and non-conviction-based confiscation for money-laundering. Object-based confiscation is the rule, but value-based confiscation is possible in a subsidiary way. These provisions refer to the "object" of the offence or its value, not explicitly to the instrumentalities used in or destined for use in its commission.

The prosecutor and the investigating judge can seize and freeze assets (arts. 133-135, 210-212 and 260-261 CPC and arts. 28 and 29 of Law No. 2004-20).

Madagascar has a basic regulation on the administration of seized assets in article 260 CPC; however, it has not yet established an institutional structure.

With regard to money-laundering, all relevant measures can be taken when proceeds are transformed into other property or intermingled with property of legitimate sources, and with regard to income and other benefits derived from proceeds of crime.

Property belonging to a person convicted of a money-laundering offence or to his family members can be confiscated unless they can establish its lawful origin.

The rights of bona fide third parties are protected in articles 261 CPC and 36 No. 1 of Law No. 2004-20.

According to article 24 of Law No. 2004-030, BIANCO can inspect and request documentation on the accounts held with banks or other financial institutions by the suspect and his family members. Article 27 of the same Law No. 2004-020 gives the judicial authorities the power to overcome bank secrecy in money-laundering investigations.

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitation for crimes is 10 years and for misdemeanours 3 years, from the date of commission, if no investigative actions or prosecution have been carried out in the meantime (art. 3 CPC). Therefore, the period prescribed for money-laundering and embezzlement is 10 years and for the other corruption offences 3 years. Evasion of justice is not a reason for suspension.

Madagascar has not implemented article 41.

Jurisdiction (art. 42)

Madagascar has established its jurisdiction for offences committed in its territory (art. 27, Ordonnance 62-041), but not on board a Malagasy vessel or aircraft.

Jurisdiction has also been established for offences committed by Malagasy citizens and offences committed against the security of the State (art. 507 CPC) and, upon request of the prosecutor, for those committed against Malagasy citizens (art. 508 CPC).

The jurisdiction to prosecute Malagasy citizens in lieu of extradition is assumed as a general principle.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Article 17, paragraph 1, of Law No. 2004-030 foresees that any contract, licence, permit or authorization obtained by corrupt means is automatically void.

Civil action for the compensation of damage can be pursued within the criminal proceedings according to articles 182-183 and 192-193 CPC.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The law enforcement authorities investigating corruption are BIANCO, the police, the gendarmerie and the investigation units within the specialized Chaîne Pénale Anti-corruption (CPAC).

The independence of BIANCO is according to the law guaranteed by the security of the positions of its officers, the availability of sufficient resources, and the autonomy of its operations. The powers of BIANCO are set out in articles 22-30 of Law No. 2004-030.

CPAC is a system of specialized anti-corruption investigators, prosecutors and courts. It does not yet operate exclusively for corruption offences. Conversely, not all cases involving corruption are handled by CPAC. Unlike BIANCO, CPAC does not have a national competence.

Article 14 of Law No. 2004-020 and Decree No. 2007-510 provide for the establishment of a Financial Intelligence Unit (FIU - SAMIFIN).

The Director General of BIANCO has the power to directly ask for the support of all law enforcement agencies (art. 23(5) of Law No. 2004-030). BIANCO and other law enforcement agencies can exchange officers with special know-how. BIANCO has memorandums of understanding with SAMIFIN and the Ministry of Justice.

Instructions given to prosecutors are not recorded in writing.

BIANCO has cooperation with the private sector, including the chamber of commerce, in the area of prevention and education. The FIU provides training and meets regularly with reporting entities.

Complaints are received, also anonymously, by BIANCO, the police and the gendarmerie. BIANCO cooperates with Transparency International Madagascar, which provides a hotline for complaints, and plans to set up a website for the reporting of corruption offences.

2.2. Successes and good practices

The following successes and good practices are highlighted:

- The possibility to take investigative steps before the lifting of immunity (art. 30(2)).
- The protection of whistle-blowers in article 35 of the anti-corruption Law No. 2004-030, which provides for a complaint procedure that may result in measures such as reinstating the whistle-blowers in their position or reimbursing them for damages (art. 33).
- The procedure on the compensation of damage, which can be initiated by a verbal statement of the victim and even ex officio (art. 35).

2.3. Challenges in implementation

While noting Madagascar's efforts in the field of anti-corruption, it is recommended that Madagascar:

General part

- Define the term "public official" in accordance with article 2, subparagraph (a), of the Convention, and consistently use this term throughout the CP.
- Continue efforts to establish a national system of crime statistics disaggregated by offence, state of the process and outcome.
- Update the system of sanctions in the CP and abolish those sanctions that are not applied anymore.

Criminalization and law enforcement

- Include explicitly third-party benefits and the "giving" of an undue advantage in all bribery offences; more clearly delineate the elements of the provisions criminalizing active bribery (art. 177.1 and art. 183, para. 2 CP) with a view to avoiding overlaps between them (arts. 15 and 16, para. 1).
- Consider criminalizing passive transnational bribery (art. 16, para 2).

- Clarify that the investigation of embezzlement as a Convention offence should fall within the competence of BIANCO (art. 17).
- Consider including third-party benefits in trading of influence offences, consider explicitly mentioning the "giving" of an undue advantage, and consider harmonizing the provisions on trading in influence (art. 177.1, No. 3, and art. 179 CP) (art. 18).
- Taking into account the existing considerations regarding criminalizing active bribery in the private sector, further pursue the criminalization of this conduct (art. 21, subpara. (a)).
- Consider including third-party beneficiaries in bribery in the private sector (art. 21, subpara (b)).
- Consider making embezzlement in the private sector a distinct offence (art. 22).
- Recognizing the general criminalization of money-laundering based on predicate offences committed abroad, abolish the possibility of waiving the principle of dual criminality by treaty with a view to enhancing legal security (art. 23, subpara 2 (c)); furnish copies of its relevant laws to the Secretary-General of the United Nations (art. 23, subpara 2 (d)).
- Criminalize obstruction of justice according to article 25, subparagraph (a), not only to induce false testimony, but also to interfere in the giving of testimony or the production of evidence (art. 25, subpara (a)).
- Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by all justice and law enforcement officials (art. 25, subpara (b)).
- Consider the introduction of criminal liability of legal persons for all corruption offences, and assess if the sanctions, especially the criminal fines foreseen for legal persons, are sufficiently effective and dissuasive (art. 26).
- Could criminalize attempt for all corruption offences (art. 27 para. 2).
- Establish a longer statute of limitations for corruption offences characterized as *délits*, and establish a possibility of suspending it or foresee a longer statute of limitations in the case of evasion of justice. Further, Madagascar may assess the possibility of introducing a regulation by which the statute of limitations for corruption offences starts with the discovery of the facts (art. 29).
- Consider whether the use of any discretionary powers could be guided by the adoption of a policy comparable to the one in the circular on criminal policy regarding money-laundering, with a view to maximizing the effectiveness of law enforcement measures (art. 30(3)).
- Adopt a comprehensive legislative regime in line with article 31 for the seizure, freezing and confiscation of proceeds and instrumentalities used in and instrumentalities destined for use in all corruption offences, and establish an institutional framework for the management of seized and confiscated assets (art. 31).

- Create consolidated witness protection legislation with regard to all criminal offences, and covering all measures described in the Convention, for witnesses and experts; to the extent necessary and feasible, institute a witness protection programme and provide financing for it; consider entering into agreements for the international relocation of witnesses; and take measures to enhance the role of victims during trial (art. 32).

- Establish strong coordination mechanisms between the various law enforcement bodies; take measures to ensure the independence of prosecutors, for example, by regulating that instructions to prosecutors must be given in writing; the new proactive approach of BIANCO to act ex officio was welcomed (art. 36).

- In the reform of the witness protection legislation, include the protection of collaborators with justice (art. 37, para. 4).

- Continue to encourage citizens to report offences, including through the establishment of hotlines (art. 39, para. 2).

- Could adopt legislation to allow the taking into account of previous convictions in other States (art. 41).

- Establish jurisdiction over offences committed on board national vessels or aircraft (art. 42, subpara. 1 (b)), consider establishing jurisdiction over participation in or attempt of money-laundering committed abroad (art. 42, subpara. 2 (c)), and consult with other States parties in the cases established in article. 42, paragraph 5. Madagascar could establish its jurisdiction over corruption offences when it does not extradite the alleged offender (art. 42, para. 4).

2.4. Technical assistance needs identified to improve implementation of the Convention

Madagascar indicated technical assistance needs in the context of the development and implementation of the National Anti-Corruption Strategy.

For criminalization, Madagascar requested legislative drafting assistance, including through on-site assistance by anti-corruption experts, for articles. 16, paragraph 2, 20, 21, subparagraph (b), 25, 26 and 29. For law enforcement, the same forms of technical assistance are sought on articles 30-34 and 37-39, and training on articles 31-33 and 37. Assistance in the establishment of crime statistics/databases was also mentioned.

Two areas were established as a priority:

(a) The provision of legislative assistance to fully criminalize all corruption offences;

(b) The establishment of a consolidated framework and programme for the protection of witnesses, experts and collaborators with justice; and on a related matter, the further development of measures to protect officials investigating corruption.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated in two bilateral, three regional and a number of multilateral treaties to which Madagascar is a party, and, in a subsidiary manner, in the Extradition Law (1927) and in Law No. 2004-020. At the time of the review, a draft law on international cooperation (extradition and mutual legal assistance) was being finalized.

Madagascar does not require a treaty for extradition, but can extradite on the basis of reciprocity or international courtesy. Madagascar considers the Convention a legal basis for extradition.

Extradition is based on the principles of dual criminality, proportionality and specialty. However, dual criminality is practised with a large measure of flexibility and determined based on the underlying conduct.

Extraditable offences are those with maximum sanctions of deprivation of liberty of at least two years, which includes some but not all Convention offences. Using the Convention as a legal basis, all Convention offences could be considered extraditable. If a person is sought for various offences, they are extraditable if the sum of their maximum penalties reaches two years.

Extradition is excluded for political offences. Money-laundering is not considered a political offence (art. 54, Law No. 2004-020); neither is corruption, according to general principles. Extradition for fiscal offences is not explicitly allowed.

Madagascar can arrest a person based on an INTERPOL red notice.

Based on article 5(1) of the Extradition Law, Madagascar does not extradite its nationals, while according to article 51(h) of Law No. 2004-020, nationality is an optional ground for refusal. Some of the treaties to which Madagascar is a party regulate the obligation to "extradite or prosecute" (for example, art. 2, para. 2, of the treaty with France) and the possibility of enforcing foreign sentences (for example art. 60 of the General Convention on Cooperation in Justice Matters between 12 States of the region).

The extradition procedure has a judicial and an administrative phase. Decisions cannot be appealed. A concern over discrimination is a mandatory ground for refusal pursuant to article 50 (b) of Law No. 2004-020. There is no legal obligation to consult with the requesting State before refusing a request.

Extradition proceedings have a duration of approximately two months. The Extradition Law provides for specific deadlines. A simplified procedure is foreseen in article 15 of the Extradition Law and article 61 of Law No. 2004-020 if the person sought agrees to the extradition, and in the two bilateral treaties through a direct procedure between the Ministries of Justice. The court only assesses the legal requirements for extradition, not the evidence on the commission of the offence.

A draft of a new extradition law at the time of the country review contained provisions on a number of relevant issues, including extradition for fiscal offences, an anti-discrimination clause and a right to appeal. It maintained the minimum

penalty requirement of two years and nationality as a non-mandatory ground for refusal.

Madagascar expressed its intention to negotiate additional bilateral treaties on extradition and mutual legal assistance, and to ratify the Southern African Development Community (SADC) Protocol against Corruption.

Madagascar has concluded three treaties on the transfer of sentenced persons.

Madagascar does not have legislation or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance is regulated in the above-mentioned bilateral and regional treaties, in article 253, paragraph 3, CPC, as well as in Law No. 2004-020. Madagascar can provide mutual legal assistance on the basis of the Convention, although there have been no cases yet.

Madagascar requires dual criminality as a matter of practice, and according to article 43(d) of Law No. 2004-020. In principle, mutual legal assistance in the absence of dual criminality could be afforded on the basis of the Convention.

Madagascar can provide assistance for all purposes foreseen in the Convention, also with regard to procedures against legal persons, to the extent that the required act is not contrary to domestic law. This includes procedures specified in the request (art. 44, Law No. 2004-020).

Madagascar has received information without prior request, which it can keep confidential according to general principles of law. It has not yet spontaneously transmitted information. Informal case coordination meetings for the preparation of mutual legal assistance requests are held especially in cases involving multiple jurisdictions or conflicts of competence.

The Ministry of Justice is the central authority. Requests are received in French and Malagasy through diplomatic channels unless otherwise regulated in a treaty. Some of the treaties to which Madagascar is a party allow direct transmission to the Prosecutor's Office. In urgent circumstances, requests can be received through INTERPOL, by fax or e-mail, but not orally.

The principles of confidentiality and specialty are regulated in articles 59 and 62 of Law No. 2004-020 and applied as general principles of law. Videoconferences for purposes of testimony have been held in practice and are contained in the draft legislation.

Mutual legal assistance cases in Madagascar take one year on average, and the easiest cases two to three months. A circular of the Minister of Justice in 2013 instructed officials to prioritize the timely execution of requests. The execution of requests according to deadlines suggested by the requesting State party and the provision of information on the status of a request are implemented in practice. Malagasy authorities gave examples in which they requested further information or consulted with the requesting party before refusing a request.

Article 43 of Law No. 2004-020 and the treaties to which Madagascar is a party contain grounds for refusal of mutual legal assistance that are largely in line with

the Convention. Banking secrecy cannot be invoked in this regard. However, Madagascar currently cannot provide assistance for fiscal offences; for corruption offences that involve fiscal matters it could in principle be done on the basis of the Convention. Article 43 of Law No. 2004-020 establishes that reasons have to be given when refusing assistance, and mutual legal assistance can be postponed if it interferes with domestic procedures. In some of the treaties to which Madagascar is a party, safe conduct for witnesses who give evidence at the request of the requesting State is guaranteed. There is no legislation on the costs of the execution of a request; Malagasy authorities confirmed that unless the parties agree otherwise, the costs are borne by the requested State party.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

BIANCO has cooperation agreements with its counterparts in Mauritius and France, and is developing cooperation with China and Malaysia. The police cooperate through INTERPOL, and SAMIFIN is a candidate FIU to the Egmont Group. In the region, most law enforcement cooperation is realized through the Judicial Regional Platform of the Indian Ocean Commission countries. The Platform also links Madagascar to further cooperation networks such as Eurojust, the European Judicial Network or the Sahel Judicial Platform.

Joint investigative teams can be formed on the basis of a treaty, including the Convention, or an ad hoc arrangement. Such teams have been established on the basis of the United Nations Convention against Transnational Organized Crime.

Madagascar applies all special investigative techniques mentioned in the Convention to money-laundering offences (arts. 25-26, Law No. 2004-020). In other matters, they can also be used in practice, without specific legal basis. They can be ordered by the Prosecutor-General. Electronic surveillance requires a judicial order and information gathered therefrom must be supported by other means of evidence in court. At the international level, there are no specific regulations in the relevant treaties, but Madagascar can use the techniques on the basis of the Convention or on a case-by-case basis and has already done so, although not yet in corruption offences.

3.2. Successes and good practices

- Madagascar is making efforts to adopt comprehensive legislation on extradition and mutual legal assistance (arts. 44, 46).
- Madagascar has an established practice to informally consult on mutual legal assistance requests before their formal submission (art. 46).
- Coordination meetings before the preparation of formal mutual legal assistance requests are held in cases involving multiple jurisdictions (art. 46).
- Madagascar actively engages in cooperation through the Judicial Regional Platform of the Indian Ocean Commission countries (art. 48).

3.3. Challenges in implementation

It is recommended that Madagascar:

- Continue its efforts to adopt comprehensive legislation on extradition and mutual legal assistance; ensure that such new legislation contains all elements regulated in the Convention (arts. 44, 46).
- Ratify the SADC Protocol and assess whether new bilateral treaties would further international cooperation (arts. 44, 46).
- Madagascar could grant extradition in the absence of dual criminality (art. 44, para. 2).
- Recognize all Convention offences as extraditable (art. 44, paras. 4 and 7).
- Clarify the law to the effect that corruption offences are not considered political offences (art. 44, para. 4).
- Inform the Secretary-General that it considers the Convention a legal basis for extradition (art. 44, para. 6).
- Regulate in its future reforms the principle "extradite or prosecute", and the enforcement of foreign sentences (art. 44, paras. 11 and 13).
- Allow for comprehensive judicial review of decisions on extradition, and for consultations with the requesting State before refusal of extradition (art. 44, paras. 14 and 17).
- Regulate generally concerns about discrimination among the reasons for refusal (art. 44, para. 15).
- Madagascar could transmit information to other States parties without prior request (art. 46, para. 4).
- Render assistance that does not involve coercive action in the absence of dual criminality; Madagascar could also render a wider scope of assistance even in the absence of dual criminality (art. 46, para. 9).
- Regulate the transfer of detained persons for the purposes of obtaining testimony and other evidence from and to Madagascar (art. 46, paras. 10-12).
- Review and, if appropriate, update the notification of the Secretary-General on the designation of its central authority, and assess whether direct receipt of requests by the central authority could contribute to swift and efficient cooperation (art. 46, para. 13).
- Madagascar could accept requests orally in urgent circumstances, on the understanding that they are confirmed in writing forthwith (art. 46, para. 14).
- Ensure that mutual legal assistance may not be refused on the ground that the offence involves fiscal matters (art. 46, para. 22).
- Execute mutual legal assistance requests as soon as possible and reduce the average time needed (art. 46, para. 24).
- Clarify the limits of confidentiality of documents that are not public, and the possibility of submitting them to a requesting party (art. 46, subpara. 29 (b)).

- Consider the possibility of transferring from or to other States parties criminal proceedings in cases where such transfer is considered to be in the interests of the proper administration of justice (art. 47).
- Explicitly regulate the appropriate use of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, to the extent permitted by the basic principles of the domestic legal system, for all Convention offences, and for their use in international cooperation (art. 50).

3.4. Technical assistance needs identified to improve implementation of the Convention

Madagascar indicated the following technical assistance needs:

In the short term, assistance was requested for the finalization of the draft international cooperation law.

In the medium term, specific technical assistance was needed for extradition and mutual legal assistance, including for:

- Strengthening institutions for implementing the new legislation.
- Developing international cooperation guidelines.
- Training law enforcement and judicial officials, including in international asset recovery.
- Disseminating good practices in international cooperation (arts. 44 and 46).

Further, Madagascar sought assistance for strengthening the active involvement of Madagascan officials in law enforcement and asset recovery networks (art. 48, para. 1).

Training and on-site assistance by an anti-corruption expert on offences committed through the use of modern technology and on special investigative techniques would also contribute to the full implementation of article 48, paragraph 3, and article 50.